No. 86-1189

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

WILLIAM J. GEORGIUS, JR.,
Petitioner,

v.

STATE OF MARYLAND,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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QUESTION PRESENTED FOR REVIEW

1. Does the Fourth Amendment require suppression of evidence seized pursuant to a search warrant supported by a falsified affidavit.

2. Does the Sixth Amendment require production of the Grand Jury testimony of the State's key witness following a request by the Defense.

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OPINION OF THE COURT BELOW

The unreported per curiam opinion of the Court of Special Appeals of Maryland in Georgius v. State, No. 1541, September Term, 1985, filed June 27, 1986, affirming Petitioner's conviction is reproduced in the Appendix (pp.1-18). The Order

of the Court of Appeals of Maryland, Georgius v. State. Petition Docket No. 319, September Term, 1986. filed November 5. 1986, denying Appellant's Petition for a Writ of Certiorari is reproduced in the Appendix (p. 19).

STATEMENT OF JURISDICTION

The Order of the Court of Appeals of Maryland denying Appellant's Petition for a Writ of Certiorari was filed November 5, 1986. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(3) and the Rules of this Court, Rule 17.1(b) and (c).

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons. houses. papers. and effects, against unreasonable searches

> and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment VI:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

STATEMENT OF THE CASE

On December 29, 1984, members of the Baltimore City Police Department executed

a search and seizure warrant at the Petitioner's home in Baltimore, Maryland. During the search, the police found and confiscated small quantities of marijuana and cocaine, drug paraphernalia, and a set of scales.

A pre-trial hearing was held on May 22 and 23, 1985, before Judge David Ross pursuant to Petitioner's motion to quash the warrant and suppress the evidence seized.

The affidavit accompanying the search and seizure warrant contained statements allegedly made by Brenda Faye Georgius, the Petitioner's wife, on December 16, 1984.[1] Attached to

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[1] On that date, the Baltimore City Police had been contacted by Mrs. Georgius to escort her to her husband's home to retrieve some of her belongings. Mrs. Georgius had been thrown out of the house December 15, 1984.

Petitioner's motion to quash the search warrant and suppress evidence was an affidavit from Mrs. Georgius denouncing the statements alleged in the affidavit to have been made by her.

The affidavit stated, inter alia, that Mrs. Georgius had told the officers, voluntarily and without any questioning by the officers, that her husband "was indeed selling marijuana" from her house; that during the previous week, her husband had approximately one pound of marijuana in their home; that various forms of paraphernalia were in the house; and that her husband's source of supply came from an unknown person in Pennsylvania.

Mrs. Georgius testified during the motion to suppress that she had never given Officer Wood the information he had included in his affidavit. She specifically denied that she told Officer

Wood that her husband was selling drugs from the house, that her husband got drugs from Pennsylvania or that scales and other related paraphernalia were in the house. She further denied that she had told Officer Wood that her home had contained one pound of marijuana during the preceeding week.

In rebuttal, the State offered the testimony of Officer Wood and Officer Youngbar. Officer Wood testified that both he and Officer Youngbar spoke to Mrs. Georgius concerning her husband's involvement with drugs and that Mrs. Georgius admitted the allegations against her busband as set forth in the affidavit. Officer Youngbar corroborated this testimony.

On cross-examination however, Officer Wood admitted that he had asked questions of Mrs. Georgius, and that

she had not volunteered information as the warrant application stated. He also admitted that he had directed Mrs. Georgius to enter the house and bring out any drugs that might be in the home. Mrs. Georgius entered the home for the dual purpose of picking up belongings and looking for drugs, according to Officer Wood, but came out empty handed. The Officer failed to include in his warrant application that the wife had failed to find any drugs in the house on that date, December 16, 1984.

In order to detract from the officer's credibility and to show his propensity for giving false information, the Petitioner elicited from Officer Wood, on cross-examination, that changes concerning the description of the premises to be searched had been made on the

original warrant but the same changes were not present on the copies of the search warrant in the hands of the Petitioner and the State.

The Petitioner, during his cross examination of Officer Wood, requested that the grand jury testimony of the witness be produced for purposes of cross-examining the witness. The Assistant State's Attorney stated to the Court that she did not have a copy of the transcribed grand jury testimony in her physical possession and that she was unaware of whether or not the transcribed testimony existed. The Court refused to allow the Petitioner the opportunity to discover whether or not such transcribed testimony existed.

Following the testimony of Officer Wood, the State called Officer Youngbar to testify on its behalf. Although, as set forth supra at 6, his testimony did corroborate Officer Wood's testimony to some extent, inconsistencies in other areas were brought to light between the two officers' testimony. Additionally, Officer Youngbar admitted that he had not signed his signature to the return of the warrant that was presented to a District Court Judge. He stated that Officer Wood signed his name on the return without his permission or authority.

Following the Courts' denial of his motion to quash search warrant and suppress evidence, the Petitioner elected to be tried by a jury and trial commenced on the same date, May 23, 1985. On May 28, 1985, the jury found the

Petitioner guilty of possession of cocaine and possession of marijuana. After a pre-sentence investigation report was prepared, the Petitioner was sentenced on July 29, 1985. Judge Ross imposed an eighteen-month term of incarceration for the conviction of possession of cocaine and a concurrent six-month term of incarceration for the possession of marijuana.

Petitioner appealed to the Court of Special Appeals of Maryland, which affirmed the judgment of the trial court. His Petition for a Writ of Certiorari was denied by the Court of Appeals of Maryland.

REASONS FOR GRANTING THE WRIT

The Court of Appeals of Maryland has denied Certiorari on important questions of federal law decided by the Court of

Special Appeals. These decisions are contrary to applicable decisions of this Court involving the Fourth Amendment and the application of the exclusionary rule and the Sixth Amendment.

Probable cause must be shown before a judge or magistrate will issue a search and seizure warrant. This Court interprets the Constitution to require that police act in good faith and to avoid perjury or reckless disregard for the truth when making application for a warrant. Contrary to the evidence presented at trial, the trial judge, in an abuse of discretion, held that the Petitioner failed to show, by a preponderance of the evidence, that the police acted in bad faith when they submitted the affidavit in support of the search warrant. The Petitioner submits that the burden was met and,

therefore, his motion to quash the search warrant and suppress evidence should have been granted in accordance with this Court's holding in Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978).

Additionally, Petitioner was denied his constitutional right to confront witnesses against him when the trial judge denied his motion to have the state's key witness' grand jury testimony turned over to Petitioner for his use in cross-examination of the witness. Thus, Petitioner was denied his right to cross-examine the witness, a right which is implicit in the Sixth Amendment right to confront witnesses against him.

I

THE FOURTH AMENDMENT REQUIRES SUPPRESSION OF EVIDENCE SEIZED PURSUANT TO A SEARCH WARRANT SUPPORTED BY A FALSIFIED AFFIDAVIT

In Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978), the Supreme Court ruled that when a defendant makes a substantial preliminary showing that a false statement has been intentionally, or with reckless disregard for the truth, included in an affidavit for a search warrant, and that the challenged statement is necessary for the finding of probable cause to issue the warrant, a hearing should be held at the defendant's request to address his allegations. The defendant must prove by a preponderance of the evidence that the challenged statements in the warrant affidavit were either the result of perjury or reckless disregard for the truth. If the defendant meets this burden, the challenged statements are excised from the warrant affidavit. If the warrant affidavit then fails

to present probable cause for the issuance of the warrant, the warrant is voided and the fruits of the search are suppressed. Id. at 155-156; 171-172.

In the instant case, the burden of proof was met by the Petitioner. It was shown through testimony presented by Petitioner's witnesses, through inconsistent testimony given by the State's witnesses, and through independent documentary evidence that the allegations made in the affidavit supporting the search and seizure warrant were the product of perjury or reckless disregard for the truth.

Although the trial court has the discretion to decide who is telling the truth, and to decide the underlying attack on the validity of the warrant affidavit based on his own observations, in the instant case it is respectfully

suggested that the Judge abused his discretion.

Officers Wood and Youngbar included in their warrant affidavit information allegedly obtained from Petitioner's wife. However, the source of the officers' information testified that she had never made the statements that the officers alleged she had made. Mrs. Georgius' credibility was not impeached by the State during cross-examination, to the contrary, her credibility was bolstered by the testimony that within one week prior to the hearing, she had sworn out a warrant for the arrest of her husband.

On the other hand, the credibility of the State's key witness, Officer Wood, was impeached several times over through his own contradictory testimony, through contradictory testimony elicited from

Officer Youngbar, and through his misrepresentations to the District Court Judge during his application for and return of the search warrant.

In the absence of the information allegedly obtained from Mrs. Georgius, the Petitioner contends that the affidavit would lack probable cause. Officer Wood admitted that he had had prior information from a confidential informant concerning alleged narcotics dealings by the Petitioner, but felt he lacked probable cause for a search warrant until after his convenient encounter with Mrs. Georgius.

The Petitioner submits that he met his burden of proof by proving by a preponderance of the evidence that the statements alleged to have been made by Mrs. Georgius which were contained in the warrant were the product of perjury or reckless disregard for the truth. Thus,

it was error for the trial court to deny Petitioner's Motion to Suppress Evidence and it was error for the Court of Special Appeals to affirm.

II

THE SIXTH AMENDMENT REQUIRES PRODUCTION OF THE GRAND JURY TESTIMONY OF THE STATE'S KEY WITNESS FOLLOWING A REQUEST BY THE DEFENSE.

The right of a Defendant to confront witnesses against him is a fundamental right protected by the Fourteenth as well as the Sixth Amendment. Pointer v. Texas, 380 U.S. 400 85 S.Ct. 1065, 13 L.Ed.2d 923 (1968). The right to effectively cross-examine witnesses is implicit in the Sixth Amendment right to confrontation. Davis v. Alaska, 415 U.S. 308, 315-316, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974).

During both the hearing on the Motion

to Suppress and the trial on the merits the Petitioner requested the production of the grand jury testimony of Officer Wood. Following the request at the Motion's hearing, the Assistant State's Attorney replied by stating that she did not have any copies of the grand jury testimony of Officer Wood and that she was unaware as to whether or not the officer's grand jury testimony had even been taken, let alone transcribed.

At that point, the trial judge decided that a transcript did not exist and that he would not "stop this hearing to conduct an investigation to find something out which probably does not exist." The Petitioner thereupon requested that the court reporter who recorded the grand jury proceedings be made available to the defense to allow the court reporter to read from his notes the contents of

the witness' testimony. The motion was denied. At the trial of this case, following the direct examination of Officer Wood, Petitioner renewed his motion for the production of the grand jury minutes and/or court stenographer and/or court stenographer notes of the witness. Again, Petitioner's motion was denied.

The Petitioner contends that the denial of his motions violated his right to confrontation through effective cross-examination under the Sixth and Fourteenth Amendments.

The Petitioner's request was necessary in order for the Petitioner to properly cross examine Officer Wood. The outcome of the Motion depended on the Judge assessing the credibility of the competing witnesses, i.e., Mrs. Georgius and Officers Wood and Youngbar. The Petitioner had already attacked the credibility of

Officer Wood by showing inconsistencies in the State's witnesses' testimony, inconsistencies in documentary evidence, and the forgery of Officer Youngbar's signature on the warrant return. Knowledge of the witness' grand jury testimony could have aided the Petitioner in his attack on the officer's credibility. See, Dennis v. U.S., 384 U.S. 855, 870, 86 S.Ct. 1840, 16 L.Ed.2d 973 (1966); U.S. v. Proctor & Gamble Co., 356 U.S. 677, 681, 78 S.Ct. 983, 2 L.Ed.2d 1077 (1958). "The determination of what may be useful to the defense can properly and effectively be made only by an advocate." Dennis v. U.S., supra at 875.

The request by the Petitioner to have the court reporter and his notes made available was, likewise, reasonable. It would not have unduly delayed the trial

because the Petitioner only requested that the court reporter read to him the notes taken at the grand jury hearing. He was not requesting that a typed manuscript be prepared if one did not already exist. More importantly, it would have aided the Petitioner in his cross examination of Officer Wood. This Court has recognized that "disclosure, rather than suppression, of relevant materials ordinarily promotes the proper administration of criminal justice." Dennis v. U.S., supra, at 870.

> ...where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony

> of the individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice or jealousy.

Davis v. Alaska, 415 U.S. 308, 317 n.4, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974) quoting Greene v. McElroy, 360 U.S. 474, 496, 79 S.Ct. 1400, 3 L.Ed.2d 1377 (1959).

When a defendant makes a request for the production of grand jury testimony, whether or not the testimony has been transcribed, the trial court should order the production of the testimony in order to afford the defendant his Constitutional right to confrontation under the Sixth and Fourteenth Amendments to the United States Constitution.

Where the credibility of the State's key witness who had testified before a grand jury is at issue and the believability of the witness will decide the outcome of the issue, justice demands that the reasonable request for the production of the grand jury testimony be granted. Since the credibility of the State's key witness was at issue, it was error for the trial court to deny Petitioner's motion for production of grand jury testimony, and it was error for the Court of Special Appeals to affirm.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that this Honorable Court reverse the Courts below.

Respectfully submitted,

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APPENDIX

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1541

September Term, 1985

WILLIAM J. GEORGIUS, JR.

v.

STATE OF MARYLAND

Wilner
Bloom
Morton, James C., Jr., (retired, specially assigned),

JJ.

PER CURIAM

Filed: June 27, 1986

In this appeal from convictions for possession of cocaine and marijuana and the sentences imposed thereon by the Circuit Court for Baltimore City, William Georgius, Jr., challenges the validity of a search and seizure warrant executed by officers of the Baltimore City Police Department, who seized cocaine, marijuana, and paraphernalia from appellant's home. Appellant contends that because the application and affidavit in support of the warrant contained false statements the evidence seized should have been excluded. Appellant also argues that the trial court erred in denying his request for the production of certain grand jury testimony and in denying his motion to strike the trial court testimony of a sequestered witness. Finding no error in any of the lower court's actions about which appellant is here

complaining, we shall affirm the judgments.

On 29 December 1984 police officers executed a search and seizure warrant at appellant's home in Baltimore. During the search the police found quantities of marijuana, cocaine, and drug paraphernalia and a set of scales. Based on this evidence, a Baltimore City grand jury issued a seven count indictment, which essentially charged appellant with possession of cocaine and marijuana with intent to distribute and possession of paraphernalia. Appellant filed a motion to quash the warrant and suppress the evidence seized; the motion was heard before Judge David Ross on 22 and 23 May 1985. Judge Ross denied the motion on 23 May, and trial commenced before a jury in the Circuit Court for Baltimore City on the same day. The jury found

appellant guilty of possession of cocaine and marijuana but not guilty of possession of cocaine with intent to distribute. The State entered a nol pros on each remaining count. On 29 July 1985 Judge Ross sentenced appellant to eighteen months imprisonment for possession of cocaine and a concurrent term of six months for possession of marijuana.

I. Warrant

The basis of appellant's motion to quash the warrant and suppress the evidence seized was that the application and affidavit in support of the warrant contained statements allegedly made by Brenda Faye Georgius, appellant's wife, which Mrs. Georgius denied having made. The affidavit for the warrant was made by police officers Robert G. Wood and Richard Youngbar. Officer Wood swore in the affidavit that a confidential informant

who had supplied reliable information twice in the past told him in November of 1984 that appellant was selling marijuana from his house and that appellant usually had large quantities of marijuana in his possession.

The affidavit further stated that Brenda Georgius, appellant's wife, "informed both officers that William J. Georgius Jr. was indeed selling marijuana from [his house]. Mrs. Georgius further informed us that during the week of 8 - 15 December 1984 William J. Georgius Jr. had a quantity of approximately 1 pound of marijuana in ths house..." The affidavit also stated that Mrs. Georgius advised the officers that there was drug paraphernalia in the house as well as scales, bags, and other devices for packaging

narcotics for sale.[1] The affidavit then concluded that Mrs. Georgius's statements coincided with the information given by the informant.

On the basis of that affidavit, a District Court judge issued a search and seizure warrant on 24 December 1984. The warrant was executed five days later, and the drugs and paraphernalia described above were seized. On 26 February 1985 appellant filed a motion to quash the warrant and suppress the evidence. Attached to the motion was a notarized "statement" sworn to by Brenda Georgius on 2 January 1985. In that statement

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[1] Testimony taken during the suppression hearing revealed that Brenda and William Georgius had a quarrel on 16 December 1984, as a result of which Brenda had been thrown out of the house. Mrs. Georgius called the police to obtain help in removing her belongings; Officers Wood and Youngbar responded. The information which the police say they obtained from Mrs. Georgius apparently flowed from that incident.

Mrs. Georgius said that she told Officers Wood and Youngbar that her husband did not sell marijuana and that there was none in the house. She reported that Officer Wood asked her, "How bad do you want to fry him for this?" She concluded by saying that the police insisted that her husband was a drug dealer,

> thereby putting words in my mouth. They took advantage of me and my condition. My husband has never dealt in any kind of drugs and the affidavit attached to the warrant, specifically pages 4 and 5, are not true. I have read pages 4 and 5 of the affidavit and these words are not mine. This information is made up by Officer Woods [sic].

A hearing on the motion was held on 22 May 1985, wherein Mrs. Georgius elaborated on her statement. She related that she called the police for help, that she was quite upset and crying, and that the police asked her to go

inside the house and bring out any drugs she found. She testified that she insisted to the police that there were no drugs in the house. She then specifically denied each statement attributed to her in the police affidavit. She admitted that a week before the hearing she requested an arrest warrant on her husband for assaulting her.

Officer Wood also testified at the hearing, reiterating what he stated in his affidavit and explaining that he confronted Mrs. Georgius with the informant's accusations and that Mrs. Georgius responded by saying that she had seen about 1 pound of marijuana in the house recently, along with a set of scales which appellant kept in the bedroom. Officer Wood admitted that he had been investigating appellant's alleged in-

volvement with drugs when he assisted in handling the Georgiuses' domestic dispute but denied taking unfair advantage of the situation. He also admitted that when he was photocopying the warrant he changed the designation on the original of the premises to be searched from a one to a two story building. He explained that the way the house is built makes it look like a single story structure, that he realized it had two floors only after the warrant was issued, that he changed the original and had the issuing judge sign the original, and that he never changed the copies.

Officer Youngbar also testified at the hearing. He stated that he had signed his name to the affidavit and the application for the warrant but admitted that his name had been signed to the warrant itself by Officer Wood.

Appellant contends that Mrs. Georgius's affidavit denying that she made any accusatory statements to the police, Officer Wood's admission that he changed the warrant, and Officer Youngbar's admission that he did not sign the warrant were sufficient pieces of evidence to satisfy his burden of showing that the affidavit and the warrant contained false information. We disagree.

Appellant correctly points out that the standards to apply in a case such as this are those set out by the Supreme Court in Franks v. Delaware, 438 U.S. 154 (1978). The rule enunciated in Franks is simple:

> [W]here the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary

> to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.

Id. at 155-56.

The question, then, is whether appellant established the alleged perjury by a preponderance of the evidence. Judge Ross clearly did not believe that he had. Since such a determination is within the fact-finding function of the trial judge, our review of it is limited by the "clearly erroneous" standard of Md. Rule 1086. We do not find Judge Ross's conclusion

to be erroneous; moreover, if we were determining this same issue ourselves, on the basis of the record before us we would undoubtedly reach the same conclusion.

The blunt fact of the matter is that Brenda Georgius's sworn statement and testimony were wholly unbelievable. As related by Officer Wood, she allegedly told the police that her husband was selling drugs from the house, that he had about 1 pound of marijuana in the house, and that he kept a set of scales in the bedroom. This information was presented to the district court and a warrant was issued. The search uncovered the very things Mrs. Georgius allegedly described, including bags of marijuana and a set of scales. Mrs. Georgius's later sworn statements that she never described these things, that her husband never

sold drugs, and that no drugs were in the house are completely refuted by the physical evidence. Since we are not here concerned with the propriety of the issuance of the warrant in the first place, but only with the question whether the statements contained in the affidavit and application were true, we may consider the fruits of the search in examining this question. In short, drugs and a scale were found in the Georgius house during the search on 29 December 1984. Mrs. Georgius's statement of 2 January 1985, being utterly inconsistent with that evidence, was not worthy of belief. Judge Ross's finding that the application and affidavit for the warrant did not contain falsehoods was not clearly erroneous.

II. Grand Jury Testimony

Officer Wood testified before the grand jury that issued the indictments against appellant. Appellant requested the production of a transcript of that testimony both at the suppression hearing and the trial on the merits. The State made it apparent in both instances that it did not have possession of any transcripts of the grand jury testimony because none had been prepared. Appellant requested the court to order the production of the grand jury stenographer so that he or she could reveal in court the untranscribed notes from the grand jury. The court refused all of appellant's requests.

We find no error in the trial court's refusal to grant appellant's requests. It is quite clear that the decision to order the production of such transcripts,

or the court reporter in lieu thereof, is within the discretion of the trial court. Appellant points us to the Court of Appeals ruling in Jones v. State, 297 Md. 7 (1983), saying that when transcripts have not been prepared and a defendant requests the production of the reporter the court should grant that request. While Jones is indeed the proper authority, we do not read that case so broadly. In disposing of a motion for reconsideration, the Court said:

> Our decision in Jones was not intended to mandate the recording and transcription of all grand jury testimony ... Furthermore, we believe that whether to require transcription of recorded grand jury testimony in a particular case is a matter for the discretion of the grand jury or the State's Attorney and ultimately for the jury judge, whose judgment ought not to be disturbed absent an abuse of said discretion.

Id. at 22 (emphasis in original).

We find no abuse of discretion here. Appellant's charge was that Officer Wood lied in his affidavit in support of the warrant. Judge Ross had the affidavit and warrant before him and heard the testimony of Officer Wood, Brenda Georgius and others at the hearing and the trial. What was said at the grand jury was only of tangential significance at the hearing and trial, since the warrant had already been issued by then, and no pressing need was shown for that testimony.

III. Sequestered Witness

The court, at appellant's request, ordered the sequestration of all witnesses at the suppression hearing. During a recess, the assistant State's Attorney spoke with Officer Wood regarding the Officer's having changed the warrant to describe appellant's house as a two story building instead of a one story building.

Appellant now contends that this discussion was a flagrant violation of the sequestration order which, at a minimum, created an "appearance of the possibility that testimony could be manufactured to explain the discrepancies in the copies of the search warrant," in contravention of our decision in Watkins v. State, 59 Md. App. 705 (1984).

We find nothing improper in Officer Wood's discussion with the prosecutor. As we explained in Watkins:

> The "essential purpose of the sequestration Rule, [Rule 4-321] we said in Hurley v. State, 6 Md. App. 348, 351-52... (1969), "is to prevent one prospective witness from being taught by hearing another's testimony; its application avoids an artificial harmony of testimony that prevents the trier of fact from truly weighing all the testimony; it may also avoid the outright manufacture of testimony." [Emphasis supplied]... What the Rule seeks to avoid is a prospective witness

> learning what another witness has, in fact, said--what, in fact, has occurred in the courtroom.

Id. at 721. In the instant case there is no indication whatsoever that the prosecutor discussed with Officer Wood what any previous witness had said in court. (There had, in fact, been only one witness before Officer Wood, and that was Brenda Georgius.) This discussion occurred shortly before Officer Wood's testimony and concerned what he was about to say, not what anyone else had already said. Appellant has referred us to no authority indicating that it is improper for a prosecutor to discuss with his or her witness that witness's prospective testimony. We find no error in the court's refusal to strike Officer Wood's testimony.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

WILLIAM J. GEORGIUS, JR. * IN THE

v. * COURT OF APPEALS

STATE OF MARYLNAD * OF MARYLAND

* Petition Docket No. 319
September Term 1986
(No. 1541 September
Term 1985, Court
of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, and the answer filed thereto, in the above entitled case, it is,

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: November 5, 1986